

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 43 of 2007**

Smt. Ram Bai, W/o Bhanu @ Bhanu Pratap aged about 47 years, by caste Lodhi, R/o Village Joratarai, Police Station & Tahsil Khairagarh, District Rajnandgaon (CG)

---- Applicant**Versus**

Bhanu @ Bhanu Pratap aged about 50 years, S/o Late Shri Prem Lal, By Caste Lodhi, Cultivator R/o Village Sonpuri, Police Station Chhuikhadan, Tahsil Khairagarh, District Rajnandgaon (CG)

----Respondent

For Applicant	: Shri K.A. Ansari, Sr. Advocate with Smt. Meera Ansari, Advocate
For Respondent	: Shri Praveen Dhurandhar, Advocate

Hon'ble Smt. Justice Rajani Dubey**Order On Board****22.8.2019**

1. Heard.
2. This revision is directed against the order dated 8.1.2007, passed by the Additional Sessions Judge, Khairagarh, in Cr. Revision No.96/2005, whereby the learned revisional court below has allowed the revision of the respondent and set aside the order of maintenance passed on 29.3.2005 in Misc. Cr. Case No.6/2004 by the Additional Chief Judicial Magistrate, Khairagarh, District Rajnandgaon(CG).
3. Brief facts of the case are that the applicant filed an application under Section 125 Cr.P.C. before the Additional Chief Judicial Magistrate, Khairagarh on the ground that she is legally married

wife of the respondent and out of their wedlock one son namely- Sampat Lal has born. With a view to oust her from the matrimonial house, the respondent ill treated her and wanted to marry another lady. Thereafter, the applicant had to live with her parents along with her son at village Joratarai and her father maintained the applicant and her small child and the applicant was also doing some labour work. But after death of her father, her brother did not take care of her and due to her old age, she is not able to do any work, therefore, she filed an application for grant of maintenance of Rs.2,000/- per month from the respondent/husband.

4. The respondent/husband has admitted his marriage with the applicant, but denied other allegations and stated that the applicant is living separately on her will without any reason, therefore, she is not entitled for any maintenance and after 10 years he performed '*Chudi marriage*' with another lady. Out of the second wedlock he has 3 children and has a responsibility to maintain them.
5. After hearing counsel for both the parties, the Additional Chief Judicial Magistrate allowed the application of the applicant/wife and granted her maintenance of Rs.450/- per month from the respondent/husband. Thereafter, the respondent/husband preferred a revision against the order of maintenance dated 29.3.2005 passed by the Additional Chief Judicial Magistrate and the revisional court below by the impugned order dated 8.1.2007 allowed the revision and set aside the order dated 29.3.2005 and rejected the maintenance application of the applicant. Hence, this revision.

6. Learned counsel for the applicant submits that the order passed by the revisional court below is based on wrong assumptions and interpretation of law of maintenance and the learned revisional court below has failed to analyze the evidence and drawn a wrong conclusion from the evidence produced by the parties. There was complete refusal on the part of the respondent in the intervening years but because father of the applicant anyhow provided sustenance to the applicant and her son, the applicant did not file maintenance application earlier. The applicant does not have a good health and therefore, she cannot do work as a labourer and unable to maintain herself and as she did not file application for maintenance earlier, does not close her right for demand of maintenance. The respondent has good financial condition and he being a husband is liable under the law to provide maintenance to the applicant/wife. The applicant has properly explained the delay in filing the application for grant of maintenance and merely, delay in filing the application cannot be a ground for denial of maintenance, particularly when it is properly explained, therefore, the impugned order passed by the revisional court below is liable to be set aside. He placed reliance on the decision of the Hon'ble Apex Court in the matter of **D. Velusamy Vs. D. Patchaiammal, AIR 2011 SC 479.**
7. On the other hand, learned counsel for the respondent supported the impugned order and submitted that the order passed by the revisional court below is just and proper and requires no interference by this Court.

8. I have heard learned counsel for the parties and perused the material available on record.
9. It is an admitted fact that the applicant is legally married wife of the respondent and from their wedlock 5 children were born, out of them only one son- Sampat Lal is alive. The applicant is living separately from the respondent. In cross-examination, she has stated that she is unable to do any work and has no financial help or support from anybody. The trial court in para 7 to 14 has properly appreciated the evidence adduced by the parties and held that the applicant is legally married wife of the respondent and she is unable to maintain herself and therefore, granted her maintenance of Rs.450/- per month. But, the revisional court below on the ground of delay has rejected the claim of maintenance of the applicant. Hon'ble the Apex Court in the matter of **D. Velusamy** (supra) has held in para 8 as under:-

8. Thus it is the own case of the respondent herein that the appellant left her in 1988 or 1989 (i.e. two or three years after the alleged marriage in 1986). Why then was the petition under Section 125 Cr.P.C. filed in the year 2001, i.e. after a delay of about twelve years, shall have to be satisfactorily explained by the respondent. This fact also creates some doubt about the case of the respondent herein."

10. In this case also the applicant has explained everything in details that why she did not file the application for grant of maintenance, which appears to be genuine and proper and that does not close the right of the applicant to demand/get maintenance from her husband, who is first legally married wife of the respondent and

there is no other legal issue between the parties. But, looking to the circumstances that after about 19 years of a long gap of she is living separately from the husband/respondent, she is entitled to get maintenance of Rs.7,000/- per month from the respondent/husband, which would be just and proper looking to the present price index.

- 11.** Accordingly, the revision is partly allowed and it is ordered that the respondent/husband shall pay to the applicant/wife maintenance of Rs.7,000/- per month from the date of passing of this order.

Sd/

(Rajani Dubey)
JUDGE